

In the Matter of the Petition of Intrado)
Communications Inc. for Arbitration)
Pursuant to Section 252(b) of the)
Communications Act of 1934, as amended,) Case No. 9138
to Establish an Interconnection Agreement)
with Verizon Maryland Inc.)
)

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**Before the
STATE OF MARYLAND
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of Intrado
Communications Inc. for Arbitration
Pursuant to Section 252(b) of the
Communications Act of 1934, as amended,
to Establish an Interconnection Agreement
with Verizon Maryland Inc.

**INTRADO COMMUNICATIONS INC. REQUEST FOR RECONSIDERATION OF THE
HEARING EXAMINER SCHEDULING NOTICE**

Intrado Communications Inc. (“Intrado Comm”), by its attorneys, hereby respectfully submits its Request for Reconsideration of the Hearing Examiner’s Scheduling Notice issued April 8, 2009, in the above-captioned matter (“Scheduling Notice”).

The decision to delay action in the pending arbitration based on Verizon representations that the Virginia arbitration proceeding before the Federal Communications Commission Wireline Competition Bureau (“FCC Bureau”) will provide useful guidance to the Maryland Public Service Commission (“Commission”) because it will address “the threshold issue of Intrado’s entitlement to Section 251(c) interconnection,”¹ is unsupported by the record evidence and contrary to federal law. The Communications Act of 1934, as amended (“Act”), sets forth specific parameters for state commissions to follow when conducting arbitrations under Sections 251 and 252 of the Act. Specifically, under the Act, the party petitioning for arbitration (Intrado Comm in this situation) must identify the unresolved issues for which it seeks arbitration, and the respondent (Verizon in this situation) may designate additional issues for resolution by the state commission.² When evaluating the petition and response, the state commission is required to

¹ Verizon Reply Brief at 3.

² 47 U.S.C. §§ 252(b)(2), (3).

“limit its consideration . . . to the issues set forth in the petition and in the response, if any.”³ The issue of whether Intrado Comm is entitled to Section 251(c) interconnection for the competitive provision of 911/E-911 services to public safety answering points (“PSAPs”) is not an issue in this instant arbitration proceeding.

Similar to all of the other Intrado Comm/Verizon arbitrations, including the FCC (Virginia) arbitration, the Parties in this proceeding filed a “joint” issues matrix setting forth the Parties’ agreed-upon issues to be arbitrated by the Commission. Importantly, neither the initial or revised joint issues matrix presented to Commission Staff contains Intrado Comm’s entitlement to Section 251(c) interconnection as an issue to be arbitrated by the Commission.⁴ The joint issues matrix presented to Commission Staff was nearly identical to the matrices used by the Parties in the other states in which arbitration proceedings are pending. This is based on the agreement reached between Intrado Comm and Verizon that Intrado Comm’s entitlement to Section 251(c) would not be an issue for arbitration between the Parties consistent with Intrado Comm’s pending arbitration proceedings⁵ with Verizon⁶ in Delaware,⁷ Illinois,⁸ Massachusetts,⁹

³ 47 U.S.C. § 252(b)(4)(A). *See also* Order No. PSC-96-0933-PCO-TP, at 2 (July 17, 1996) (“Section 252(b)(4) requires this Commission to limit its consideration to the issues raised by the petition and the response.”)

⁴ Case No. 9138, Intrado Communications Inc. and Verizon Maryland, Inc. Joint Issues Matrix, September 12, 2008, filed on December 12, 2008.

⁵ The issue of whether Intrado Comm is entitled to Section 251(c) interconnection is present in Intrado’s arbitration proceeding with Verizon in Texas due to a Texas commission rule permitting Administrative Law Judges to identify “threshold issues” to be addressed prior to other issues raised in the proceeding. *See, e.g.*, TEX. PUC INTERCONNECTION RULES § 21.61(a). The issue was not raised by Intrado in its petition for arbitration. The Parties filed briefs on the issue in October and November 2007, and a decision is pending from the Administrative Law Judges.

⁶ The issue of whether Intrado Comm is entitled to Section 251(c) interconnection is present in Intrado Comm’s arbitration proceeding with Verizon before the Wireline Competition Bureau of the Federal Communications Commission (standing in the shoes of the Virginia commission) only by virtue of the Bureau’s decision to consolidate the Intrado Comm/Verizon and Intrado Comm/Embarq Virginia arbitrations. The issue was not present in Intrado Comm’s arbitration proceeding with Verizon before the Bureau because neither Intrado Comm (in its petition) nor Verizon (in its response) designated it as an issue for arbitration. *See, e.g.*, WC Docket No. 08-185, Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and

North Carolina,¹⁰ Ohio,¹¹ and its finalized proceeding with Verizon in West Virginia.¹² Indeed, the West Virginia commission specifically noted that it would not address the issue given that it

Verizon Virginia Inc. (collectively, “Verizon”), Reply of Intrado Communications of Virginia Inc. at 9-10 (filed Jan. 26, 2009), *available at* http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520194156. A decision is expected from the Bureau in early May. However, it was designated as an issue in Embarq/Virginia arbitration under review by the FCC. Thus, the consolidated Embarq/Verizon arbitrations with Intrado Comm pending before the FCC include this issue solely by virtue of the Embarq arbitration.

⁷ See, e.g., Delaware Docket No. 08-61, In the Matter of the Petition of Intrado Communications Inc. for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware LLC (filed March 5, 2008), Direct Testimony on behalf of Verizon Delaware LLC at 9, lines 168-70, 173-75 (filed Nov. 3, 2008) (“Verizon agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLEC. . . . Verizon’s position here is that it will provide Intrado the same interconnection and other services it provides to any CLEC”).

⁸ See, e.g., Illinois Docket No. 08-0550, Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North, Inc. and Verizon South, Inc., Rebuttal Testimony on behalf of Verizon North, Inc. and Verizon South, Inc. at lines 168-71 (filed Nov. 26, 2008) (stating that Intrado Comm “approached Verizon as a competitive local exchange carrier (“CLEC”) and Verizon agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLEC”), *available at* <http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=131270>.

⁹ See, e.g., Massachusetts DTC 08-09, Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon New England Inc. d/b/a Verizon Massachusetts, Prefiled Testimony on behalf of Verizon Massachusetts at 7, lines 20-21 (filed Dec. 29, 2008) (stating Intrado Comm “approached Verizon for negotiation of an interconnection agreement as any other CLEC would”).

¹⁰ See, e.g., North Carolina Docket No. P-1187, Sub 3, *Petition of Intrado Communications Inc. for Arbitration with Verizon South Inc. d/b/a Verizon North Carolina*, Direct Testimony on behalf of Verizon South Inc. at 8, lines 152-54, 157-59 (filed Oct. 31, 2008) (“Verizon agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLP. . . . Verizon’s position here is that it will provide Intrado the same interconnection and other services it provides to any CLP”), *available at* <http://ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=9AAAAA80380B&parm3=000128292>

¹¹ See, e.g., Ohio Case No. 08-198-TP-ARB, Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North, Inc., Refiled Testimony on behalf of Verizon North, Inc. at lines 152-56 (filed Dec. 30, 2008) (“Verizon does not agree that Intrado is entitled to section 251(c) interconnection for the 911 services it seeks to provide. However, the Commission has already determined that issue and has required Verizon and other ILECs to negotiate and arbitrate with Intrado under sections 251 and 252 of the Act.”), *available at* <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=156bb9c6-ab87-4bb4-bf41-3ecb622b847c>.

¹² See, e.g., West Virginia Case No. 08-0298-T-PC, Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5, Direct Testimony on behalf of Verizon West Virginia Inc. at lines 172-74 (filed Sept. 9, 2008) (“Verizon has agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLEC”), *available at* <http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=248548&NotType='WebDocket> et.

was not squarely raised by the Parties and Verizon had waived the issue by entering into interconnection agreement negotiations with Intrado Comm.¹³

As the Scheduling Notice acknowledges, the ruling expected from the FCC Bureau in early May concerns only the so-called “threshold issue,” not any substantive interconnection provisions between the Parties as Verizon itself admits.¹⁴ The law is clear that “state commissions are limited to deciding issues set forth by the parties” because “the *parties* determine what issues will be resolved through arbitration, not the state commission.”¹⁵ Thus, the pending FCC Bureau proceeding provides no basis for the Commission to hold the instant arbitration proceeding in abeyance.¹⁶

Abeyance is appropriate when an interim decision “save[s] all parties valuable time and resources” and “hastens the matter to an efficient conclusion.”¹⁷ That is not the case here because the Parties have held their evidentiary hearing and filed their legal briefs. The pending decision from the FCC Bureau does not change the Commission’s evaluation of the existing record or the Parties’ legal arguments with respect to the issues presented for arbitration, and the Act requires action on the arbitration based on that record.¹⁸

¹³ West Virginia Case No. 08-0298-T-PC, Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5, Arbitration Award, at 16-17 (Nov. 14, 2008) (“West Virginia ALJ Award”), approved by Commission Order (Dec. 16, 2008).

¹⁴ Verizon Hearing Exhibit 1, Direct Testimony on behalf of Verizon Maryland at 9, lines 1-9 (noting that Intrado Comm “approached Verizon as a CLEC and Verizon agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLEC” and noting that, despite the Bureau proceeding, “Verizon’s position here is that it will provide Intrado the same interconnection and other services it provides to any CLEC”).

¹⁵ *TCG Milwaukee, Inc. v. Public Service Commission of Wisconsin*, 980 F. Supp. 992, 999-1001 (W.D. Wis. 1997) (emphasis in original).

¹⁶ The deadline for state commission action on petitions for arbitration is prescribed by statute. *See* 47 U.S.C. § 252(b)(4)(C).

¹⁷ *Mid-Atlantic Petroleum Distributors Ass’n*, 2002 WL 1058367, *1 (Md.P.S.C. 2002).

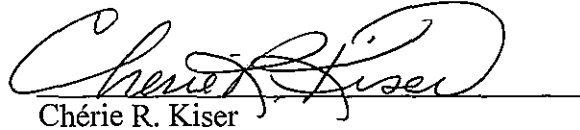
¹⁸ 47 USC § 252(b)(4)(C).

CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Commission reconsider its decision to refrain from issuing a Proposed Order in this matter and expeditiously proceed to issue a Proposed Order addressing the issues in this arbitration based on the record.

Respectfully submitted,

INTRADO COMMUNICATIONS INC.

A handwritten signature in black ink, appearing to read "Cherie R. Kiser", is written over a horizontal line.

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Dated: April 15, 2009

CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of INTRADO COMMUNICATIONS INC.'S RESPONSE TO HEARING EXAMINER'S SCHEDULING NOTICE was filed electronically and via Federal Express with the Maryland Public Service Commission and was served electronically and via US Mail, postage prepaid, on this 15th day of April 2009 upon the following:

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